



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201439004

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

JUN 30 2014

Uniform Issue List: 408.03-00

T. EP. RA. T.

Legend:

Taxpayer A	=
IRA B	=
Financial Institution C	=
Account D	=
Account E	=
Financial Institution F	=
Amount 1	=
Amount 2	=
Amount 3	=
Amount 4	=
Amount 5	=
Amount 6	=

Dear :

This is in response to your request for a ruling dated August 1, 2013, as supplemented by correspondence dated September 17, and November 15, 2013,

and February 18, and April 28, 2014, from your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A represents that she received a distribution of Amount 4 from IRA B with the intention of using Amount 1 to invest within a newly opened IRA. Taxpayer A asserts that her failure to accomplish a rollover of Amount 1 within the 60-day period prescribed by section 408(d)(3) of the Code occurred when Financial Institution F failed to follow her rollover instructions.

Taxpayer A maintained IRA B, under section 408(a) of the Code, with Financial Institution C. On January 30, 2012, Taxpayer A requested a distribution of Amount 4 from IRA B, of which Amount 5 was a required minimum distribution for 2012. On the same day, Taxpayer A met with a customer service representative from Financial Institution F. During the meeting, Taxpayer A expressed a desire to roll over Amount 1 and have it (Amount 4 less Amount 5) invested in the same manner as it was with Financial Institution C. In March of 2013, during the preparation of Taxpayer A's tax return, it was discovered that Amount 2 had been deposited into Account D, a non-IRA Certificate of Deposit account, and Amount 3 had been deposited into Account E, also a non-IRA Account. The apparent reason for the split deposit was Taxpayer A's desire to make 2012 gifts to family members. Following the deposit of Amount 3 into Account E, Taxpayer A withdrew Amount 6 in order to make these gifts. Taxpayer A represents that Amount 2 has not been used for any other purpose.

Based on the facts and representations, you request a ruling that the Service waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount 1 from IRA B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if -

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

Taxpayer A asserts that Financial Institution F did not follow her instructions to roll over Amount 1 into an IRA. Instead, Amount 1 was split into Amount 2 and Amount 3. Amount 2 was deposited into Account D. Amount 3 was initially deposited into Account E, but then spent by Taxpayer A for personal reasons.

After considering all relevant facts and circumstances concerning Taxpayer A's assertion that Institution F did not follow her instructions, we hereby waive the 60-day rollover requirement with respect to the distribution of Amount 2 from IRA B. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to transfer an amount not to exceed Amount 2 into a rollover IRA. Provided all other requirements of section 408(d)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount 2 will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

However, with respect to Amount 3, the facts and circumstances show that Taxpayer A used Amount 3 to make gifts to family members. Therefore, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount 3 from IRA B.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 408(a)(6) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office. If you wish to inquire about this ruling, please contact (I.D. # ), SE:T:EP:RA:T1, at ( )

Sincerely yours,

*Carlton A. Watkins*

Manager  
Employee Plans Technical Group 1

Enclosures:

Deleted Copy of this Letter  
Notice of Intention to Disclose, Notice 437

cc: